80-1588

NO.

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ALEXANDER L. STEVAS,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

RONALD JACOBS,

Petitioner

-vs-

UNITED STATES OF AMERICA,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

JOHN R. WILLIAMS
Williams & Wise
265 Church Street
New Haven, Conn.
(203) 562-9931

Counsel for Petitioner

March 16, 1981

QUESTIONS PRESENTED

1. In holding that the government was not only permitted but "required" to present without limitation evidence that a government witness had pleaded guilty to conspiracy in connection with this case, did the Court of Appeals violate this Court's holding in Kirby v. United States, 174 U.S. 47 (1899), disregard Rule 803(22) of the Federal Rules of Evidence, and place itself at odds with the Third, Fifth, Sixth, Seventh and Eighth Circuits?

2. In affirming the district court's refusal to allow defense examination of materials claimed under the Jencks Act without first examining those materials, did the Court of Appeals violate the express command of 18 U.S.C. §3500(c)?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED.....	
OPINION BELOW.....	2
JURISDICTION.....	2
STATUTES INVOLVED.....	2
STATEMENT OF THE CASE.....	9
REASONS FOR GRANTING THE WRIT.....	13
I. In Holding That The Government Was Not Only Permitted But "Required" To Present Without Limitation Evidence That A Government Witness Had Pleaded Guilty To Conspiracy In Connection With This Case, The Court Of Appeals Violated This Court's Holding In Kirby v. United States, 174 U.S. 47 (1899), Disregarded Rule 803(22) Of The Federal Rules Of Evidence, And Placed Itself At Odds With The Third, Fifth, Sixth, Seventh And Eighth Circuits..	13
II. In Affirming The District Court's Refusal To Allow Defense Examination Of Materials Claimed Under The Jencks Act Without First Examining Those Materials, The Court Of Appeals Violated The Express Command Of 18 U.S.C. §3500(c).....	18

	Page
CONCLUSION.....	20
APPENDIX A (Court of Appeals Decision).....	1a
APPENDIX B (Order Denying Petition for Rehearing)...	1b
APPENDIX C (Judgment of District Court).....	1c

TABLE OF AUTHORITIES

Page

Cases:

Bisaccia v. Attorney General of New Jersey, 623 F.2d 307 (3d Cir. 1980)... 17

Brady v. Maryland, 373 U.S. 83 (1963)..... 18

Kirby v. United States, 174 U.S. 47 (1899).....13,14

United States v. Harrell, 436 F.2d 606 (5th Cir. 1970).. 15

United States v. Little Boy, 578 F.2d 211 (8th Cir. 1978).. 17

United States v. Toner, 173 F.2d 140 (3d Cir. 1949)... 17

United States v. Vandetti, 623 F.2d 1144 (6th Cir. 1980). 16

United States v. Wilcher, 332 F.2d 117 (7th Cir. 1964).. 17

OTHER AUTHORITIES:

18 U.S.C. §3500..... 6,18, 19

Fed. R. Ev. 803(22)..... 9,14

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FOR THE SECOND CIRCUIT

The petitioner, Ronald Jacobs, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Second Circuit entered in this proceeding on October 22, 1980.

OPINION BELOW

The opinion of the United States Court of Appeals for the Second Circuit is unreported, but appears in the Appendix hereto. The judgment of the United States District Court for the District of Connecticut appears in the Appendix hereto.

JURISDICTION

The opinion of the United States Court of Appeals for the Second Circuit was entered on October 22, 1980. A timely petition for rehearing was denied on February 6, 1981, and this petition for a writ of certiorari was filed within 60 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

STATUTES INVOLVED

UNITED STATES CONSTITUTION, AMENDMENT V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall

be compelled in any crimiral case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

UNITED STATES CONSTITUTION, AMENDMENT VI:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

18 U.S.C. §2:

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by

him or another would be an offense against the United States, is punishable as a principal.

18 U.S.C. §549:

. . .

Whoever, without authority, willfully removes, breaks, injures, or defaces any customs seal or other fastening or mark placed upon any vessel, vehicle, warehouse, or package containing merchandise or baggage in bond or in customs custody;

. . .

Shall be fined not more than $5,000 or imprisoned not more than two years, or both.

18 U.S.C. §659:

Whoever embezzles, steals, or unlawfully takes, carries away, or conceals, or by fraud or deception obtains any pipeline system, railroad car, wagon, motortruck, or other vehicle, or from any tank or storage facility, station, station house, platform or depot or from any steamboat, vessel, or wharf, or from any aircraft, air terminal, airport, aircraft terminal or air navigation facility with intent to convert to his own use any goods or chattels moving as or which are a part of or

which constitute an interstate or foreign shipment of freight, express, or other property;

. . .

Shall in each case be fined not more than $5,000 or imprisoned not more than ten years, or both; but if the amount or value of such money, baggage, goods or chattels does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

The offense shall be deemed to have been committed not only in the district where the violation first occurred, but also in any district in which the defendant may have taken or been in possession of the said money, baggage, goods, or chattels.

. . .

To establish the interstate or foreign commerce character of any shipment in any prosecution under this section the waybill or other shipping document of such shipment shall be prima facie evidence of the place from which and to which such shipment was made. . . .

18 U.S.C. §2314:

Whoever transports in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of $5,000 or more, knowing the same to have been stolen, converted or taken by fraud;

. . .

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

18 U.S.C. §3500:

. . .

(b) After a witness called by the United States has testified on direct examination, the court shall, on motion of the defendant, order the United States to produce any statement (as hereinafter defined) of the witness in the possession of the United States which relates to the subject matter as to which the witness has testified. If the entire contents of any such statement relate to the subject matter of the testimony of the witness, the court shall order it to be delivered directly to the defendant for his examination and use.

(c) If the United States claims that any statement ordered to be produced under this section contains matter which does not relate to the subject matter of the testimony of the witness, the court shall order the United States to deliver such statement for the inspection of the court in camera. Upon such delivery the court shall excise the portions of such statement which do not relate to the subject matter of the testimony of the witness. With such material excised, the court shall then direct delivery of such statement to the defendant for his use. If, pursuant to such procedure, any portion of such statement is withheld from the defendant and the defendant objects to such withholding, and the trial is continued to an adjudication of the guilt of the defendant, the entire text of such statement shall be preserved by the United States and, in the event the defendant appeals, shall be made available to the appellate court for the purpose of determining the correctness of the ruling of the trial judge. Whenever any statement is delivered to a defendant pursuant to this section, the court in its

discretion, upon application of said defendant, may recess proceedings in the trial for such time as it may determine to be reasonably required for the examination of such statement by said defendant and his preparation for its use in the trial.

. . .

(e) The term "statement", as used in subsections (b), (c), and (d) of this section in relation to any witness called by the United States, means--

(1) a written statement made by said witness and signed or otherwise adopted or approved by him;

(2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by said witness and recorded contemporaneously with the making of such oral statement; or

(3) a statement, however taken or recorded, or a transcription thereof, if any, made by said witness to a grand jury.

FEDERAL RULES OF EVIDENCE, RULE 803:

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

* * *

(22) Judgment of previous conviction. Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused.

STATEMENT OF THE CASE

Ronald Jacobs was charged with Dennis Schoendorf in an indictment returned in the District of Connecticut on July 13, 1979, with theft from interstate commerce of meat valued in excess of one hundred dollars (18 U.S.C. §§ 659 and 2), breaking and removing customs seals (18 U.S.C. §§ 549 and 2) and transporting across a state line meat valued in excess of five

thousand dollars (18 U.S.C. §§ 2314 and 2). He presented a defense of alibi. He was found guilty at a jury trial and was sentenced to imprisonment for two years, to be followed by a period of probation.

The Government's chief witness at trial was Richard Suello, an alleged accomplice in the crimes charged. Suello testified that he had participated with Jacobs, Schoendorf and others in the theft on March 22, 1979, of three truck trailers filled with frozen meat. Some of that meat was transported, he said, to Jersey City, New Jersey, where it was seized by federal agents and Suello was arrested. The rest of the meat was seized the following day in West Haven, Connecticut, a short distance from the scene of the theft.

To prove the existence of a "common plan or arrangement" between Mr. Jacobs and Suello, the Government presented testimony from Suello, over objection, that Suello had pleaded guilty to conspiracy in connection with this case. This evidence, although twice objected to, was admitted without limitation of any sort and for all purposes.

Suello's testimony was corroborated by a Government informer named Robert Proto, who claimed that in 1979 he owned and operated the Silver Fox Restaurant in Branford, Connecticut. Over defense objection, he said he began working for the FBI in the spring of 1978 and claimed to have provided information to the Government on many occasions regarding both this case and other matters. He further claimed on direct examination that his services were so valued that the FBI has paid him a total of approximately nine thousand dollars and the United States Marshal Service has paid him between eight thousand and ten thousand dollars.

Concluding his testimony on direct examination, Proto testified that the Government had promised him nothing for his testimony, had not pressured him in any way, and had paid him only five hundred dollars for his work on this case.

In the absence of the jury, the defendants thereupon moved for production of Jencks and Brady material regarding Proto. The court agreed to review the Government's apparently voluminous file on Proto in camera but, having done so,

refused to allow the defendants to see any of it. The file was sealed and marked for identification.

On appeal, the Second Circuit held "that the court did not err in refusing, after an in camera inspection, to turn over to the defense as Brady-Jencks Act material the entire government file on witness Proto. Defense counsel offered little beyond conclusory statements to support their claim that the file contained material which might impeach the witness so as to affect the outcome of the trial...."

The material which was the subject of the defendants' Jencks Act motion was not transmitted from the District Court to the Court of Appeals until after the Judgment of the District Court had been affirmed.

As to the Government's use of the accomplice's guilty plea to prove the defendant's guilt of the crimes charged, the Court of Appeals held simply "that the government was entirely within its rights and indeed was required to make such disclosure."

REASONS FOR GRANTING THE WRIT

I

In Holding That The Government Was Not Only Permitted But "Required" To Present Without Limitation Evidence That A Government Witness Had Pleaded Guilty To Conspiracy In Connection With This Case, The Court Of Appeals Violated This Court's Holding In Kirby v. United States, 174 U.S. 47 (1899), Disregarded Rule 803(22) Of The Federal Rules Of Evidence, And Placed Itself At Odds With The Third, Fifth, Sixth, Seventh And Eighth Circuits.

Mr. Jacobs was charged with three substantive offenses, but in each instance as an aider and abettor. In addition, the jury was instructed over the defendant's objection that if the jury first found that the defendant had participated in a "common plan or arrangement" to commit a crime, the jury then could consider against the defendant all the acts and statements of the other participants in the "common plan or arrangement." The most important of these alleged other participants in the "common plan or arrangement" was the Government's witness Richard Suello.

As long ago as 1899, this Court

reversed a conviction because the prosecutor, just as in the case at bar, had proved the guilt of the alleged accomplice by proving the guilty plea of the principal. In Kirby v. United States, 174 U.S. 47 (1899), this court held that "it is an elementary principle of justice, that one man shall not be affected by another's... admission, to which he is a stranger.... The fundamental error in the trial below was to admit in evidence the record of the conviction of the principal felon as competent proof for any purpose." 174 U.S. at 58, 60.

Rule 803(22) of the Federal Rules of Evidence provides expressly that "[e[vidence of a final judgment, entered...upon a plea of guilty...adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year" may be admitted for certain very limited purposes, as an exception to the hearsay rule -- "but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused." (Emphasis supplied.) The Advisory Commit-

tee has noted that to permit such evidence "would seem clearly to violate the right of confrontation."

The ruling of the Second Circuit panel on this point is directly contrary to, and in conflict with, the holdings of several other circuits.

In United States v. Harrell, 436 F.2d 606 (5th Cir. 1970), the Government had elicited evidence that the defendant's alleged co-conspirator had pleaded guilty to the conspiracy and substantive offenses. The Fifth Circuit reversed, although the defendant had not objected to such evidence. "No purpose was stated, none was required to be stated, when the question of Norris' prior guilty pleas was introduced. The legitimate presumption is that the evidentiary purpose was the general one of demonstrating Harrell's guilt of the offenses for which he was on trial.... With respect to Harrell's guilt or innocence, Norris' plea of guilty was no more and no less than an inadmissible hearsay statement....Despite the failure of trial counsel...to object, we are firm in the view that 'plain error' occurred...." 436 F.2d at 614, 615.

In United States v. Vandetti, 623 F. 2d 1144 (6th Cir. 1980) (Kennedy, J.), the Sixth Circuit reversed a conviction because the Government had presented evidence of the guilty pleas of its witnesses without limiting such evidence: "The fact that a jury found that persons indicted with appellant Vandetti were guilty is not relevant to a determination of appellant's guilt. It has no tendency to make the existence of that guilt more probable or less probable than it would be without the evidence. Their conviction is not an element of the crime....No other basis for offering them being asserted by the prosecutor, they are thus inadmissible." 623 F.2d at 1147, 1148.

In a recent Third Circuit case, "the prosecution presented the testimony of a co-conspirator,...who testified about his own plea of guilty to a charge arising out of the alleged conspiracy. Over defense counsel objections, the trial judge permitted the introduction of this testimony as to the guilty plea without requiring the prosecutor to explain its purpose and without cautioning the jury that evidence

of this nature could not be used as substantive proof of the existence of a conspiracy." Finding constitutional error, the court held: "It is well settled in this circuit that use of a co-conspirator's guilty plea as substantive proof of a defendant's complicity in a conspiracy without cautionary instruction is not admissible as evidence. United States v. Toner, 173 F.2d 140, 142 (3d Cir. 1949)." Bisaccia v. Attorney General of New Jersey, 623 F.2d 307, 308, 312 (3d Cir. 1980).

Cases in the Seventh and Eighth Circuits are to the same effect. E.g., United States v. Wilcher, 332 F.2d 117 (7th Cir. 1964); United States v. Little Boy, 578 F.2d 211 (8th Cir. 1978).

The Second Circuit's ruling on this fundamental point of law, considered essential to a fair criminal trial since the earliest times, is out of step with the holdings of the other circuits, is directly contrary to this court's prior ruling, and flatly ignores the command of the Federal Rules of Evidence. Certiorari should be granted to bring the Second Circuit into compliance with the law in

this respect.

II

In Affirming The District Court's Refusal To Allow Defense Examination Of Materials Claimed Under The Jencks Act Without First Examining Those Materials, The Court Of Appeals Violated The Express Command of 18 U.S.C. §3500(c).

After the Government witness Proto had testified upon direct examination, a quantity of Government records was turned over to the district court in camera for a determination whether any portion of such records should be made available to defense counsel either under Brady v. Maryland, 373 U.S. 83 (1963), or the Jencks Act, 18 U.S.C. §3500. The court ruled that nothing should be given to the defense, sealed the documents and marked them as a court exhibit. Upon appeal, Mr. Jacobs claimed that the materials should have turned over both as prior statements of the witness within the meaning of the Jencks Act and as exculpatory material. When Mr. Jacobs sought to have the sealed exhibit made available to the Court of Appeals for its review, the Government

objected. Jacobs filed a motion with the Court of Appeals for transmittal of the sealed exhibit, but although the motion was filed before oral argument of the appeal, it was not granted until after the appeal had been decided. In his petition for rehearing in the Court of Appeals, Mr. Jacobs again asked the court to examine the sealed exhibit and make its ruling upon the basis of such an examination. The petition for rehearing, however, was denied.

Thus, the Second Circuit decided this Jencks Act claim adversely to the appellant without ever examining the documents which were the subject of the appeal.

In declining the invitation to examine the sealed exhibit, the Second Circuit violated the clear command of 18 U.S.C. §3500(c), which provides: "If, pursuant to such procedure, any portion of such statement is withheld from the defendant and the defendant objects to such withholding, and the trial is continued to an adjudication of the guilt of the defendant, the entire text of such statement shall be preserved by the United States

and, in the event the defendant appeals, shall be made available to the appellate court for the purpose of determining the correctness of the ruling of the trial judge." (Emphasis supplied.)

In deciding a Jencks Act claim without ever looking at the documents involved, the Second Circuit blatantly violated the statutory command. Certiorari must be granted to enforce compliance with the law.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Second Circuit.

Respectfully submitted:

JOHN R. WILLIAMS
Williams & Wise
265 Church Street
New Haven, Conn. 06510
(203) 562-9931

DATED: March 16, 1981

APPENDICES

APPENDIX A

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the Twenty-second day of October, one thousand nine hundred and eighty.

Present:

HONORABLE WILLIAM H. TIMBERS,

HONORABLE JON O. NEWMAN,

Circuit Judges.

HONORABLE EDMUND PORT,

District Judge,
sitting by designation.

Circuit Judges,

UNITED STATES OF AMERICA,
Appellee,

-v.- 80-1219
80-1237

RONALD JACOBS and
DENNIS SCHOENDORF,
Appellants.

Appeals from the United States District Court for the District of Connecticut

This cause came on to be heard on the transcript of record from the United States District Court for the District of Connecticut, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgments of said District Court be and the same hereby are affirmed.

Appellants Jacobs and Schoendorf were indicted on three counts of a five-count indictment. They were charged with Theft from Interstate Shipment, 18 U.S.C. § 659 (1976); Breaking Customs Seals, 18 U.S.C. § 549 (1976); and Interstate Transportation of Stolen Property 18 U.S. C. § 2314 (1976). They also were charged with aiding and abetting these crimes. 18 U.S.C. § 2 (1976).

On March 11, 1980, after a hearing, appellants' motions to suppress physical evidence and statements were denied.

Their jury trial commenced on April 8, 1980 and ended on April 23. The jury returned guilty verdicts as to both defendants on each of the three counts. This appeal followed.

Appellants urge chiefly seven grounds for reversal of the convictions: first, that certain remarks of the prosecutor deprived them of a fair trial; second, that the district court erred in finding

that appellants lacked standing to move to suppress the results of the search of a Freuhauf trailer that contained stolen meat; third, that testimony elicited by the government from its witness as to his conviction in a related matter required an instruction from the court which was not given; fourth, that it was an abuse of discretion for the court not to turn over to appellants the entire government file on its witness Proto; fifth, that it was improper for the court to refuse to suppress statements made by appellant Schoendorf before and immediately after his arrest; sixth, that the court erred in admitting in evidence documentary material which tended circumstantially to connect appellants with recovered stolen meat; and seventh, that the court erred in denying the motion for judgment of acquittal because the government failed to prove the interstate commerce element of the offense. We hold that each of appellants' claims is without merit.

The first claim is that the prosecutor engaged in prejudicial conduct by referring to the appellants as "crooks" in his rebuttal summation. The remark should

not have been made, and it would have been preferable for the district judge promptly to advise the jury of its impropriety, but we are satisfied that any resulting prejudice was too slight to warrant a reversal. See United States v. Benter, 457 F.2d 1174, 1178 (2 Cir. 1972).

The district court did not err in finding that appellants lacked standing to challenge the search of the Freuhauf trailer. Neither appellant established the sort of possessory interest which this Court in some contexts has held sufficient. United States v. Ochs, 595 F.2d 1247 (2 Cir.), cert. denied, 444 U.S. 955 (1979). The court carefully and correctly applied the test enunciated in Rakas v. Illinois, 439 U.S. 128 (1978), where the Supreme Court held that the "capacity to claim the protection of the Fourth Amendment depends . . . upon whether the person who claims the protection of the amendment has a legitimate expectation of privacy in the invaded place." 439 U.S. at 143. On the facts here, where neither appellant was present at the time of the search, the tractor had no registration plates and the

trailer was registered to a Pennsylvanian not involved in the investigation or trial, and all evidence of appellants' ownership was based on the questionable testimony of witness Suello, we hold that the court did not err in finding that appellants had not sustained their burden of establishing standing by the evidence offered at the hearing on the motion to suppress. Appellants further contend that evidence presented at trial established their ownership of the trailer. Without reaching the government's contention that evidence presented at trial may not be considered on the issue of standing when the evidence was available at the hearing on the motion to suppress, we hold that the trial testimony did not add in any significant degree to the evidence considered and found insufficient at the suppression hearing.

As for appellants' claim that the government's disclosure of witness Suello's guilty plea in a related matter had a spillover effect, we hold that the government was entirely within its rights and indeed was required to make such disclosure.

We further hold that the court did not err in refusing, after an in camera inspection, to turn over to the defense as Brady-Jencks Act material the entire government file on witness Proto. Defense counsel offered little beyond conclusory statements to support their claim that the file contained material which might impeach the witness so as to affect the outcome of the trial, in accordance with the standard of this Circuit. Stassi, supra, 544 F.2d at 584; United States v. DiFrancesco, 604 F.2d 769 (2 Cir. 1979), cert. granted, 444 U.S. 1070 (1980). We decline to disturb the trial judge's determination that the material in the file would not have affected the outcome.

We also hold that the court was correct in refusing to suppress the statement by appellant Schoendorf, first to a federal agent on the street near his place of business, and second after his arrest and after Miranda warnings had been given. The first statement squares with the holding of Beckwith v. United States, 425 U.S. 341 (1976), where a statement by the target of an investigation -- in a non-

custodial context -- was held admissible despite the failure of the agent to give Miranda warnings. On the facts here, the colloquy was almost friendly and certainly non-custodial and was thus outside the scope of Miranda. The second set of statements were unsolicited answers to permissible personal data questions. Unlike the situation in Rhode Island v. Innis, 48 U.S.L.W. 4506 (May 12, 1980), where the Supreme Court approved the admission of an answer to a suggestive conversation among policemen in the presence of the accused, here there was no leading conversation, no devious questions, and no attempt to evade Miranda safeguards. The instant case is a stronger one for the government than Innis. We hold that the blurted answers were properly admitted in evidence.

With respect to the claim, that the court erred in admitting circumstantial documentary evidence, the rulings of the court were not arbitrary or capricious, with the standard enunciated in United States v. Robinson, 560 F.2d 507 (2 Cir.) (en banc), cert. denied, 435 U.S. 905

(1978). We hold that admission of this disputed evidence was a proper exercise of the court's discretion.

Finally, we hold that the court did not err in denying the motion for judgment of acquittal. Appellants misstate the case against them when they argue that the government proved only foreign shipment and not interstate shipment. The stolen beef and veal was taken from New Jersey, through New York, to Connecticut, and, in the case of the veal, back through New York to New Jersey. The evidence of actual interstate shipment is strong. The instant case is a stronger one than United States v. Wora, 246 F.2d 283 (2 Cir. 1957), where the conviction was affirmed even though only foreign shipment was proven. Appellants here were on notice of the charges against them. Those charges were proven.

WILLIAM H. TIMBERS/s/
UNITED STATES CIRCUIT JUDGE

JON O. NEWMAN/s/
UNITED STATES CIRCUIT JUDGE

EDMUND PORT/s/
UNITED STATES DISTRICT JUDGE,
Sitting by Designation.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the Sixth day of February one thousand nine hundred and Eighty-One

Present: HON. WILLIAM H. TIMBERS
HON. JON O. NEWMAN,
Circuit Judges
HON. EDMUND PORT, District Judge

United States of America,
Plaintiff-Appellee,

-v- 80-1219

Ronald Jacobs,
Defendant-Appellant.

A petition for a rehearing having been filed herein by counsel for the defendant-appellant, Ronald Jacobs

Upon consideration thereof, it is

Ordered that said petition be and it hereby is denied.

A. Daniel Fusaro/s/
Clerk

APPENDIX C

United States District Court for
DISTRICT OF CONNECTICUT

United States of America vs.

RONALD JACOBS

CRIMINAL B-79-26

JUDGMENT AND PROBATION COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date MAY 23, 1980

X WITH COUNSEL John R. Williams, Esq.

There being a verdict of XX GUILTY.

Defendant has been convicted as charged of the offense(s) of violation of Title 18, United States Code, Sections 659 and 2; 549 and 2; and 2314 and 2 (theft from interstate commerce; broken custom

seals and interstate transportation of stolen goods)
as charged in Counts One, Two and Three of the Indictment.

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of five (5) years on Count One.

It is ORDERED AND ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of two (2) years on Count Two. The sentence on Counts One and Two are to run concurrently.

It is FURTHER ORDERED AND ADJUDGED that imposition of sentence is suspended on Count Three and the defendant is placed on probation for a period of five (5) years. Said period of probation is to

commence upon his release from custody on Counts One and Two.

T.F. Gilroy Daly/s/
5-28-80